

# OAKLAND POLICE DEPARTMENT

## Office of Inspector General



### REVIEW OF TASK 12

April 21, 2010

**CITY OF OAKLAND**

Memorandum

**To:** Chief Anthony W. Batts

**From:** Captain Benson Fairrow, Inspector General

**Date:** April 21, 2010

**Subject:** **Disclosure of Possible Investigator Bias**

On February 1, 2010, the Audit and Inspections Unit of the Office of Inspector General initiated a review of Task 12, Disclosure of Possible Investigator Bias. The purpose of the review was to assess the Department's compliance with its policy and its progress towards achieving compliance with the requirements of Task 12 as set forth in the Negotiated Settlement Agreement.

To conduct the audit, the Office of Inspector General reviewed the files of internal investigations in which citizens complained about personnel to determine if investigators are properly disclosing any bias, which may interfere with a fair and impartial investigation of a citizen complaint. The recusal forms, notes, Chronological Activity Logs and other supporting documents were reviewed for the selected files closed between November 1, 2009 and January 31, 2010.

A handwritten signature in black ink, appearing to read 'B. H. Fairrow', with a stylized flourish at the end.

Benson H. Fairrow  
Captain of Police  
Office of Inspector General



**OFFICE OF INSPECTOR GENERAL**  
Audit and Inspections Unit



**LEAD REVIEWER**  
Sergeant Joseph Carranza

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## EXECUTIVE SUMMARY

On February 1, 2010 the Office of Inspector General (OIG) initiated a review of Task 12 Disclosure of Investigator Bias. Task 12 has been disaggregated into four sub-tasks requiring that investigators disclose relationships which might lead to a perception of bias regarding the subject(s) of any investigation, including such as family relationships, outside business relationships, romantic relationships, close work or personal friendships<sup>1</sup>. Furthermore, in cases where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the involved investigator(s) shall recuse him/herself from the investigation<sup>2</sup> and that in more ambiguous situations, the investigator(s) involved shall make full disclosure, in writing, to his/her supervisor<sup>3</sup>. Finally in the case of a Class I investigation, that supervisor shall then make a recommendation to the Internal Affairs Division (IAD) or, in the case of a division-level investigation, the unit commander. The IAD, unit commander or, as appropriate, his/her superior, shall replace the investigator in question with another investigator<sup>4</sup>.

The purpose of this review was to assess the Department's compliance with policy and its progress towards achieving compliance with the requirements of Task 12 as set forth in the Negotiated Settlement Agreement (NSA)

The OIG reviewed 68 investigations completed between November 1, 2009 and January 31, 2010. The review found the Department was in compliance with Departmental policy requiring investigators of Internal Affairs investigations to disclose possible investigator bias and met the compliance standards mandated by the NSA.

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<sup>1</sup> Task 12.1

<sup>2</sup> Task 12.2

<sup>3</sup> Task 12.3

<sup>4</sup> Task 12.4

## PURPOSE

On February 1, 2010, the Audit and Inspections Unit of the Office of Inspector General (OIG) initiated the Department's third review of Task 12, Disclosure of Possible Investigator Bias. The purpose of this review was to determine if the Oakland Police Department (OPD) is adhering to its policy and fulfilling the requirements of the Negotiated Settlement Agreement.

## BACKGROUND

There have been four prior audits conducted regarding the disclosure of possible investigator bias. The IMT and the OIG have conducted two audits each.

### **Independent Monitoring Team Audit**

The IMT's first review of Task 12 was completed in the fall of 2006 (report Titled *Fall 2006 Review*, updated and published in January 2007). The IMT determined the Department was not adhering to its policy and not meeting the NSA compliance standards for Task 12.

The IMT completed a second review of Task 12 in January 2010. The IMT determined the Department was adhering to its policy and meeting the NSA compliance standards for Task 12.1; however did not adhere to its policy or meet the compliance standards for Tasks 12.2 and 12.3.

### **Office of Inspector General Review**

The OIG completed its first review of Task 12 in June 2008. The OIG determined the Department was not adhering to its policy and not meeting the NSA compliance standards for Task 12.1. The OIG determined the Department was in compliance with Task 12.2. The audit team did not identify any applicable investigations in which Tasks 12.3 and 12.4 applied, therefore those tasks were not assessed.

In August 2009 the OIG completed its second review. The OIG determined the Department adhered better to its policy; however did not meet the NSA compliance standards for Task 12.1. The audit team determined the Department to be in compliance with Task 12.2 and did not find any applicable cases for Tasks 12.3 and 12.4; therefore those tasks were not assessed.

The below chart outlines the audit findings made by the IMT and OIG for Task 12.

Description of Task	2006 IMT	2008 OIG	2009 OIG	2010 IMT
Disclosure of Potential/Apparent Bias. (Task 12.1) <i>Properly completed and timely recusal forms.</i>	21/30 <sup>5</sup> (70%)	19/60 (32%)	118/147 (80%)	46/53 <sup>6</sup> (87%)  96/103 <sup>7</sup> (96%)
NSA Compliance Standard	95%	90%	90%	90%
Removal Where Investigator Believes He/She Cannot Conduct a Fair and Impartial Investigation or Was Directly Involved. (Task 12.2) <i>Investigator removed due to potential bias.</i>	0/3 (0%)	1/1 (100%)	1/1 (100%)	0/3 (0%)
NSA Compliance Standard	95%	95%	95%	95%
In more ambiguous situations, the investigator(s) involved make full disclosure, in writing, to his/her supervisor. (Task 12.3) <i>Investigator provides written explanation for request for recusal from an investigation.</i>	0/3 (0%)	The audit team did not find an applicable case.	The audit team did not find an applicable case.	0/2 (0%)
NSA Compliance Standard	95%	90%	90%	90%
In the case of a Class I investigation, the supervisor being informed in writing makes a recommendation to IAD or, in the case of a division-level investigation, the unit commander. The IAD, unit commander, or as appropriate, his/her superior, replaces the investigator. (Task 12.4)	0/4 (0%)	The audit team did not find an applicable case.	The audit team did not find an applicable case.	IMT combined Task 12.3 and 12.4 after their initial audit <sup>8</sup> .
NSA Compliance Standard	95%	90%	90%	

<sup>5</sup> First number indicates cases in compliance and second number indicates sample size.

<sup>6</sup> Investigations in which all required recusal forms were properly completed by each investigator.

<sup>7</sup> Number of properly completed recusal forms / number of investigators identified by the IMT as being required to complete a recusal form.

<sup>8</sup> Reference IMT review protocol dated 4/23/07. Task 12.3 - If an investigator indicates that s/he has a relationship with the involved parties that **might lead to a perception of bias** s/he provides details to the supervisor and the supervisor makes a recommendation regarding whether to replace the investigator, and, where appropriate, replaces the individual.

## NEGOTIATED SETTLEMENT AGREEMENT REQUIREMENTS

### Task 12.1

Investigators (IAD and Division-level) disclose relationships, which might lead to a perception of bias regarding the subject(s) of any investigation, including relationships such as family relationships, outside business relationships, romantic relationships, close work or personal friendships.

### Task 12.2

Where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the involved investigator(s) recuses him/herself from the investigation.

### Task 12.3

In more ambiguous situations, the investigator(s) involved make full disclosure, in writing, to his/her supervisor.

### Task 12.4

In the case of a Class I investigation, the supervisor being informed in writing makes a recommendation to IAD or, in the case of a division-level investigation, the unit commander. The IAD, unit commander, or as appropriate, his/her superior, replaces the investigator.

## OIG COMPLIANCE OVERVIEW

- 12.1 Investigators (IAD and Division-level) disclose relationships, which might lead to a perception of bias regarding the subject(s) of any investigation, including relationships such as family relationships, outside business relationships, romantic relationships, close work or personal friendships.

**In Compliance**

Compliance Requirement: 90%

Review Finding: 93%

- 12.2 Where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the involved investigator(s) recuses him/herself from the investigation.

**In Compliance**

Compliance Requirement: 95%

Review Finding: 100%

- 12.3 In more ambiguous situations, the investigator(s) involved make full disclosure, in writing, to his/her supervisor.

**In Compliance**

Compliance Requirement: 90%

Review Finding: 100%

- 12.4 In the case of a Class I investigation, the supervisor being informed in writing makes a recommendation to IAD or, in the case of a division-level investigation, the unit commander. The IAD, unit commander, or as appropriate, his/her superior, replaces the investigator.

**In Compliance**

Compliance Requirement: 90%

Review Finding: 100%

## SCOPE AND POPULATION

### Audit Scope

The scope of the audit was an assessment of OPD internal investigations of complaints against personnel to determine if investigators disclosed relationships, which might lead to the perception of bias regarding the subject(s) of any investigation and, in cases where it was clear that the nature of the relationship could be perceived to compromise the investigative process, the investigator(s) recused him/herself from the investigation.

### Audit Population

The population for this audit consisted of all 226 investigations closed between November 1, 2009 and January 31, 2010. For this review, only completed investigations resulting in a formal finding (i.e. exonerated, unfounded, not sustained or sustained) were used.

### Identification of the Random Sample

A random sample was chosen from the 226 investigations, using a one-tailed test. The one-tailed test required 68 investigations to be reviewed in order to achieve a confidence level of 95%  $\pm$  4%.

The 226 investigations were placed in case number order and randomized using a Research Randomizer site (<http://www.randomizer.org/index.htm>). The first 68 cases on the random order list were reviewed.

Due to the dynamic nature of internal investigations, the IAD database is constantly evolving. This audit was based on the status of the investigations as documented on February 1, 2010.

**Reference Material**

Negotiated Settlement Agreement (Revised Dec 2008)  
Department General Order M-3, *Receiving and Processing Complaints*  
Department Training Bulletin V-T.1, *Departmental Discipline Policy (5/30/07)*  
IAD Policy and Procedure 07-03, IAD Intake Manual (6/8/07)  
IMT Fall 2006 Review  
OIG June 2008 Review of Task 11 and 12  
OIG August 2009 Review of Task 12  
IMT January 2010 Task 12 Audit Report

**NEGOTIATED SETTLEMENT AGREEMENT REQUIREMENTS, FINDINGS, AND RECOMMENDATIONS****Task 12.1**

*...investigators (this covers IAD and field investigators) disclose relationships, which might lead to a perception of bias regarding the subject(s) of any investigation, including relationships such as family relationships, outside business relationships, romantic relationships, close work or personal friendships.*

**Audit Steps**

The 68 IAD investigations were audited for any indication that the investigator completed and signed a recusal form as required by policy (D.G.O. M-3) and that the recusal form was reviewed and endorsed by his/her supervisor prior to the initiation of the investigation.

In each investigation where a recusal form was completed, the investigation was reviewed to determine the start date based on documentation in the investigative file to ensure the recusal form was completed prior to the start of the investigation

For purposes of this review the audit team did not consider recusal forms completed and signed by IAD intake officers unless the officer took steps beyond obtaining an intake statement and the gathering of information for the creation of the control file. This is in contrast with the IMT's 2010 review in which all recusal forms were considered for review. The decision not to include recusal forms was based on Departmental policy; the pertinent sections are outlined below.

IAD Policy and Procedure 07-03 Intake Manual I. General Responsibilities 10 c. states:

*A Recusal Memorandum (Complete prior to the start of an investigation in accordance with TB V-T.1)*

Training Bulletin V T.1 PART III INTERNAL INVESTIGATION PROCEDURE MANUAL section E. Recusal Process states:

- 1. The investigator shall review the investigative file after assignment.*
- 2. Prior to the start of an internal investigation:*
  - a) The investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process.*
    - 1) If yes, the assigned investigator shall recuse him/herself from the investigation and document the circumstances on the Recusal Form (IAD Form - 13).*
    - 2) If no, the assigned investigator(s) shall document this fact on the Recusal Form.*
  - b) Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review the Recusal Form.*

Department policy states the investigator shall review the file after assignment to the investigation and then based on the review of the file and prior to any investigative action disclose any possible bias. In the case of an Intake Officer there is no investigative file to review when accepting a compliant. An Intake Officer is generally not in a position to know whether or not he/she may have a bias until an intake statement has been obtained. Should the Intake Officer be assigned to complete a Summary Finding or a Report of Investigation (ROI) he/she should complete a recusal form prior to taking any investigative steps beyond the gathering of basic information completed at intake when preparing the investigative file.

### **Findings**

Sixty-three (93%) of the 68 IAD investigations audited met the standard for this task. Five did not. Two cases (09-0067 and 09-0730) of the five investigations were completed as Division-level investigations and neither of the case files contained a recusal form nor had any documentation in the Chronological Activity Log (CAL) indicating a recusal form had been completed. Two cases (09-1120 and 09-1581), completed by IAD investigators, did not contain a recusal form nor had any documentation in the CALs a form had been completed. A third case (09-1424), also completed by an IAD investigator, contained a recusal form signed and dated after the completion of the investigation.

### **Task 12.2**

*In cases where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the involved investigator(s) recuses him/herself from the investigation.*

### **Audit Steps**

The 68 IAD investigations were reviewed to determine whether an investigator recused him/herself in each instance in which:

- 1) The investigator provided an ample explanation indicating why he/she could not conduct a fair and impartial investigation, or why his/her involvement would compromise the investigative process; or
- 2) The investigator's supervisor or commander determined the investigator was directly involved with the investigated incident;<sup>9</sup> or
- 3) The audit team determined the investigator was directly involved with the investigated incident.

### **Findings**

The auditor identified one applicable case. In case 09-0011, the investigator attempted to be recused due to a personal relationship stating in the narrative section of the recusal form, "I am friends w/ the complainant." The investigator's request to be recused was denied. The investigator's action was in accordance with policy and determined to be in compliance with the NSA standards for this task.

### **Task 12.3**

*In more ambiguous situations, the investigator(s) involved make full disclosure, in writing, to his/her supervisor.*

### **Audit Steps**

The 68 IAD investigations were reviewed to determine if an investigator made full disclosure in writing if he/she was directly involved with the incident or for any occurrence in which it was ambiguous whether or not he/she could conduct a fair and impartial investigation.

### **Audit Findings**

The auditor identified two applicable cases. Cases 09-0011 cited above and case 09-0773. In case 09-0011, the investigator made the disclosure in writing, "I am friends w/ the complainant." In case 09-0773 the investigator made a disclosure in writing detailing his involvement at the scene of the incident of the alleged allegation and

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<sup>9</sup>For the purposes of this task, "directly involved" means the IAD assigned investigator participated in or directed a specific act or omission-giving rise to the allegations under investigation.

expressed his opinion he could conduct a fair and un-bias investigation. The investigators' written disclosures of their relationship and involvement on the respective recusal forms satisfied Department policy and were determined to be in compliance with the NSA standards for this task.

**Task 12.4**

*In the case of a Class I investigation, the supervisor being informed in writing makes a recommendation to IAD or, in the case of a division-level investigation, the unit commander. The IAD, unit commander, or as appropriate, his/her superior, replaces the investigator.*

**Audit Steps**

The 68 IAD investigations were reviewed to determine that when an investigator of a Class I investigation made a disclosure in writing he/she was directly involved with the incident or it was ambiguous whether or not he/she could conduct a fair and impartial investigation, the supervisor being informed met with the investigator and then made a recommendation to allow or replace the investigator.

**Audit Findings**

The auditor identified two applicable cases (09-0011 and 09-0773) already cited above. In each case, the supervisor met with the investigator. In case 09-0011 the supervisor did not reassign the investigation and provided an explanation documented on the recusal form. In case 09-0773, the supervisor properly reassigned the investigation recognizing the investigator could not be excluded as a subject during the investigation. In both instances the supervisors' actions were in accordance with policy and determined to be in compliance with the NSA standards for this task.

**Recommendations**

Require the case investigator to enter the date the investigation was reviewed and the recusal form completed in the CAL.

Require the case investigator to enter the name and date the reviewing supervisor signed the recusal form in the CAL.

Require the investigator to enter the date he/she initiated investigative steps beyond the review of the case file in the CAL.

**CONCLUSION**

This audit determined the Department is complying with its policy and has met the compliance standards of the NSA.